

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**MANDI R. MUMM,**

**Defendant.**

**CASE NO. 8:04CR438**

**TENTATIVE FINDINGS**

The Court has received the Presentence Investigation Report ("PSR") in this case. The parties have adopted the PSR. (Filing Nos. 51, 53.) The Court has also reviewed the Defendant's Amended Motion for Downward Departure (Filing No. 57.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

With respect to the Defendant's amended motion for downward departure brought pursuant to U.S.S.G. § 5K2.0, the Court notes that the Defendant did not request an evidentiary hearing. (Filing No. 46, ¶ 6(d); NECrimR 32.1(b)(6).) The Court has carefully considered the issue raised and concludes that, although the Court has discretion to grant the motion it declines to do so for the reason that the grounds raised do not take this case outside the heartland of similar cases.

**IT IS ORDERED:**

1. The parties are notified that my tentative findings are that the Presentence Investigation Report is correct in all respects;
2. The Defendant's Amended Motion for Downward Departure (Filing No. 57) is denied;

3. The Defendant's Motion for Downward Departure (Filing No. 52) is denied as moot;

4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 6<sup>th</sup> day of June, 2005.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge